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WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500
FAX (202) 861-1783
WRITER'S DIRECT DIAL NUMBER

(202) 861-1728

April 16, 1997

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APR 16 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Petition for Reconsideration
Amendment of Section 73.606(b), Table of Allotments
Television Broadcast Stations
Helena, Montana

Dear Mr. Caton:

On behalf of KFBB Corporation, L.L.C., we hereby file a petition for reconsideration of the return of its petition for rule making to amend the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, by dereserving Channel *15, Helena, Montana. See Letter from the Chief, Allocations Branch, to Kenneth C. Howard, Jr., dated March 17, 1997.

An original and four copies of the petition for reconsideration are enclosed. Should there be any questions, please contact the undersigned.

Sincerely,



Michael Ruger

Enclosures

cc: John Karousos
Chief, Allocations Branch

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
Amendment of Section)
73.606(b), Table of)
Allotments, Television)
Broadcast Stations (Helena,)
Montana))

RM-_____

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Chief, Mass Media Bureau

PETITION FOR RECONSIDERATION

1. KFBB Corporation, L.L.C. ("KFBB"), licensee of Station KFBB-TV, Channel 5, Great Falls, Montana, through counsel, respectfully requests reconsideration of the return of its petition for rule making to amend the Television Table of Allotments, Section 73.606(b) of the Commission's Rules. See Letter from the Chief, Allocations Branch, to Kenneth C. Howard, Jr., dated March 17, 1997 ("Letter"). The staff erred in concluding that initiation of a rulemaking proceeding would not serve the public interest.¹

¹On April 3, 1997, the Commission adopted the Fifth Report and Order and the Sixth Report and Order in Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87-268). As of the filing date of this Petition for Reconsideration, these documents have not been released. As the Fifth Report and Order and Sixth Report and Order will contain information directly relevant to this Petition for Reconsideration, including the final DTV Table of Allotments, KFBB reserves the right to supplement this Petition for Reconsideration upon reviewing those documents.

Background

2. On September 20, 1996, KFBB filed a petition for rule making requesting the dereservation of vacant noncommercial television Channel *15, Helena, Montana. KFBB noted that it currently provides television reception service to Helena via its translator station K21DU, but that the secondary service is subject to displacement by full-power television services or by future DTV allotment proposals. As Helena currently has only one operating local broadcast station, with a second station authorized but not yet operational, KFBB noted that the authorization of an additional local television broadcast station would serve the public interest.

3. KFBB noted that its proposal was in accord with the directions set out in Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (Sixth Further Notice of Proposed Rule Making), 11 FCC Rcd 10968 (1996) ("Sixth Further Notice"). As the dereservation of Channel *15 would constitute a change in the status of an existing allotment, rather than the allotment of a new NTSC channel to Helena, the proposal was consistent with the freeze on accepting petitions to add new NTSC channels to the Television Table of Allotments announced in the Sixth Further Notice. KFBB noted that the Commission clearly contemplated the possibility that a petition may be filed to amend the Table of Allotments with respect to

noncommercial allotments.² KFBB pointed out that the Commission proposed in the Sixth Further Notice to delete vacant noncommercial television allotments in order to accommodate DTV, and that if no applications for an allotment were filed by the cut-off date of September 20, 1996, the opportunity to apply for Channel *15 as a noncommercial service would be permanently foreclosed.

4. Finally, KFBB submitted an engineering exhibit demonstrating that the retention of NTSC Channel 15 at Helena would not disrupt the Commission's proposed DTV Table of Allotments. The engineering exhibit also demonstrated the likelihood that, given the availability of television channels in the vicinity of Helena, Channel 15 could be matched with a DTV allotment.

5. The Commission's staff returned the petition for rule making, offering two reasons for its decision. First, the staff stated that the Sixth Further Notice established July 25, 1996, as the cut-off period for filing petitions to allot new

²KFBB referenced the following statement in the Sixth Further Notice:

[W]e also will not accept petitions for rule making proposing to amend the existing TV Table of Allotments in Section 73.606(b) of our rules to add an allotment for a new NTSC station. Other petitions to amend the TV Table of Allotments (for example, proposing to change a station's community of license or altering the channel on which it operates, including changes in which channel allotment in a community is reserved for noncommercial educational use) can continue to be filed
.

11 FCC Rcd at 10992.

television channels. Noting that channels had been available for allotment to Helena, the staff stated, "We do not believe that it is in the public interest to dereserve the only noncommercial educational allotment in Helena in order to accommodate the fact that [KFBB] did not file a petition for rule making prior to July 25, 1996." Letter at 1.

6. Second, the staff stated that the Commission is attempting to find replacement DTV allotments for all vacant noncommercial educational allotments, and that the "ongoing Commission effort to accommodate the existing Channel *15 is premised on its status as a noncommercial educational allotment." Id. The staff concluded, "We do not believe that it would be appropriate to change the status of this allotment prior to the adoption of a DTV Table of Allotments." Id.

Discussion

7. The KFBB petition for rule making should be reinstated and a petition for rule making issued expeditiously. First, the Commission's staff erred in concluding that the public interest would not be served by proposing the dereservation of Channel *15. The staff's reference to the availability of other channels for allotment to Helena is not relevant to the KFBB petition, as KFBB is proposing the dereservation of an existing channel, not the allotment of another channel. Furthermore, while there may have been other channels potentially available for allotment to Helena at one time, unless the Commission lifts the freeze on petitions for NTSC new television allotments, that option is

foreclosed. The dereservation of Channel *15 therefore provides the only viable option of providing Helena, a city of 24,569 and the capital of Montana, with an additional local television transmission service.

8. Second, the Commission's staff should not be reluctant to propose the dereservation of Channel *15, as there is no interest in applying for that channel as a noncommercial service. The staff routinely deletes vacant FM channel allotments if no expressions of interest are filed in the channels by a specified cut-off point. See, for example, Galliano and Buras Triumph, Louisiana, 8 FCC Rcd 4186 (1993). This practice ensures that vacant, unused allotments do not preclude the provision of a valuable service to a community. Here, the Commission provided a final opportunity in the Sixth Further Notice for the filing of applications for Channel *15 at Helena and no applications were filed. KFBB has, however, expressed its interest in providing a commercial television service on that channel. Rather than preclude consideration of this proposal, the Commission's staff should initiate a proceeding to dereserve the channel in order to provide Helena with an additional local television transmission service.³

9. Finally, the staff's hesitancy to propose to change the status of Channel *15 during the pendency of the Sixth Further

³Once the freeze on petitions to add new television channels to the Table of Allotments is lifted, the relative lack of spectrum congestion in the Helena area could permit the allotment of a noncommercial channel in the future, should any party express an interest in such a facility.

Notice does not serve as a basis for the return of KFBB's petition. As described above, the Commission contemplated that petitions to amend the Table of Allotments such as the one submitted by KFBB could continue to be filed. Furthermore, the Commission's efforts to accommodate Channel *15 in the DTV Table of Allotments would not be affected by the instant proposal. As KFBB's engineering analysis and the staff's analysis cited in its Letter indicate, there are a number of vacant channels that could be paired with Channel *15. Given the lack of spectrum congestion in the Helena area, any Commission efforts to accommodate Channel *15 would likely have no impact on DTV allotments for any nearby communities. Therefore, consideration of KFBB's proposal would not affect the DTV channel allotment process.⁴

Conclusion

10. The staff has erroneously concluded that consideration of KFBB's petition for rule making would not serve the public interest. Therefore, for the reasons explained above, KFBB respectfully requests that this Petition for Reconsideration be

⁴Indeed, the Commission has made significant changes to the DTV Table of Allotments as a result of comments filed in response to the Sixth Further Notice. See "FCC Agrees on DTV Buildout, Not on DTV Obligations and Must-Carry," Communications Daily, April 4, 1997, at 2. Yet KFBB's petition was filed two months before the deadline for filing initial comments to the Sixth Further Notice--more than sufficient time to permit the Commission to take into account any possible changes to the DTV Table of Allotments that could result from consideration of KFBB's proposal.

granted and that the staff initiate a proceeding to dereserve
Channel *15 at Helena, Montana.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael Ruger", written over a horizontal line.

Kenneth C. Howard, Jr.
Michael Ruger
Counsel to KFBB Corporation, L.L.C.

BAKER & HOSTETLER LLP
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Telephone: (202) 861-1500

Date: April 16, 1997